

United States
Circuit Court of Appeals

For the Ninth Circuit.

ELIZABETH B. RUSSELL, Bankrupt,
Petitioner,

vs.

HUBERT F. LAUGHARN, as Trustee in Bank-
ruptcy of the Estate of ELIZABETH B.
RUSSELL, Bankrupt,
Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
an Order of the United States District Court
for the Southern District of Califor-
nia, Southern Division.

FILED

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F. D. MONCKTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Petitioner:

J. W. MORIN, Esq., of MORIN, NEWELL &
BROWN, 723 Pacific-Southwest Bank
Building, Pasadena, California.

For Trustee:

HUBERT F. LAUGHARN, Esq., Trustee,
in propria persona, Subway-Terminal
Building, Los Angeles, California.

In the United States Circuit Court of Appeals in
and for the Ninth District.

IN BANKRUPTCY.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

PETITION TO REVISE IN MATTERS OF
LAW AN ORDER REFUSING TO SET
ASIDE CERTAIN PROPERTY AS EX-
EMPT.

To the Honorable Judges of the United States Cir-
cuit Court of Appeals in and for the Ninth
District:

The petition of Elizabeth B. Russell respectfully
represents:

I.

That she is and was at all times herein mentioned

the bankrupt herein. That she was adjudicated a bankrupt upon the 8th day of July, 1926.

II.

That upon the 10th day of September, 1926, the Trustee herein, Herbert F. Laugharn, as Trustee of the Estate of said bankrupt, made his Report of Exempt Property, a copy of which is hereto attached, designated as Exhibit "A," and reference to said exhibit is hereby made and the same is hereby made a part of this petition. That in said report the Trustee refuses to set aside as exempt the following described property, to wit:

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit:

That portion of Lot 2, in Block "Q" of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Record of said County, described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the Map of the Oakwood Tract, recorded in Book 9, page 33 of Maps, thence East parallel with the South line of said California [1*] Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet thence West parallel with the South line of said California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet

*Page-number appearing at the foot of page of original certified Petition for Revision.

to the point of the beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California.

although said property was exempt property under and by virtue of the effect of a certain Declaration of Homestead filed and recorded by the bankrupt on October 11, 1923, in Book 2718, at page 247 of Official Records, Los Angeles County, California.

III.

That upon the 27th day of September, 1926, the said Elizabeth B. Russell, the bankrupt, did file in the matter of said bankruptcy proceedings her exceptions and objections to the Trustee's Report of Exempt Property, a copy of which is hereto annexed, marked Exhibit "B," and reference to said exhibit is hereby made and the same is hereby made a part of this petition.

IV.

That thereafter, and on the 12th day of November, 1926, an order was made by the Referee, after due hearing, confirming said report of said Trustee on the subject of exempt property hereinbefore referred to, and that notice of the entry of said judgment by the Referee was issued by the said Referee on the 17th day of November, 1926, and a copy of said notice containing a copy of said order and judgment is hereto annexed, designated as Exhibit "C," and reference to said exhibit is hereby made and the same is hereby made a part of this petition.

V.

That thereafter, and upon the 24th day of No-

vember, 1926, and within ten days after notice of the entry of the last-mentioned order and judgment of the Referee, the said Elizabeth B. Russell did file a Petition for Review of said Referee's order [2] (by United States District Court), a copy of which petition is hereto annexed, designated as Exhibit "D," and reference to said exhibit is hereby made and the same is hereby made a part of this petition.

VI.

That thereafter, and upon the 13th day of December, 1926, the Referee did file his Certificate on Petition for Review pertaining to said proceedings in the office of the District Court of the United States for the Southern District of California, Southern Division, and a copy of said petition is hereto annexed, designated Exhibit "E," and reference to the said exhibit is hereby made and the same is hereby made a part of this petition.

VII.

That thereafter and following upon the presentation of said matter before said District Court last mentioned, the said matter was submitted to said Court, and upon the 29th day of January, 1927, an order was entered in the said United States District Court referred to confirming the order of the Referee of the 12th day of November, 1926, hereinabove referred to, and a certified copy of the said order of said District Court is made and filed as a part hereof, marked Exhibit "F," and reference to said exhibit is hereby made and the same is hereby made a part of this petition.

VIII.

A copy of the appraisement showing the value of the property in controversy in these proceedings is attached hereto, designated Exhibit "G," and reference to said exhibit is hereby made and the same is hereby made a part of this petition.

IX.

Your petitioner further says that she is aggrieved by the order of said District Court confirming the order of the [3] Referee of November 12, 1926, and is injured thereby, and that errors have occurred in the matter of said order as follows:

1. That, though the property described in this petition is conceded to be a homestead, and exempt from execution, the Court, following the report of the Trustee and the Referee in refusing to set aside the same as exempt property, under the provisions of Chapters One and Two, Title V, Part Four, Division Two, Civil Code of the State of California, has erred in matters of law.

2. That the Court in refusing to set aside as exempt the real property involved in this petition, and in affirming the order of the Referee ordering the Trustee to bring proceedings to sell the property involved, free and clear of liens, and from the proceeds to pay the encumbrance on the property, the claim of homestead exemption of \$5,000.00 to the bankrupt, and to account to the bankrupt estate for the surplus over and above the said two amounts, has erred in a matter of law.

3. That the Court in affirming the order of the Referee, which order, while conceding that the right,

title and interest of the bankrupt in the homestead property, both at the time of the bankruptcy and at the time of the imposing of the homestead thereon, was of a value not in excess of \$3,000.00, yet should be sold, and the proceeds of the sale of the entire property, both the community interest and the separate property interest of the bankrupt, pooled together for determining the exemptions, and the excess, if any, over exemptions pooled and accounted for to the bankrupt estate, erred in a matter of law.

4. That the Court in affirming the order of the Trustee ordering that, although all excess of interest in the property over and above \$3,000.00 was in fact the community property of Rufus W. Russell, husband of the bankrupt, and not the property of the bankrupt and under no liability for her debts, yet [4] nevertheless to be subjected to the claims of the bankrupt estate, and in effect appropriated to the use of the bankrupt's creditors, erred in a matter of law.

5. The Court in affirming the order of the Referee holding that even though a homestead declared by the bankrupt upon a property interest worth not in excess of \$3,000.00, when followed by additional contributions of community funds from the husband's control made after the imposing of the homestead character in some manner converted said community contributions to the status of the separate property of the bankrupt, regardless of the fact that said contributions were not a gift to the bankrupt, and that the homestead exemption was not filed at a time after said community contribu-

tions were made to the homestead, erred in a matter of law.

6. The Court in affirming the order of the Referee, in effect holding that the imposition of a homestead character upon the property had the effect of pooling all contributions made to that investment after, as well as before, the recording of the homestead, and had the effect of altering the title to the homestead property itself from that of tenancy in common to some other tenancy, in substance the sole property of the bankrupt, even though the imposition of a homestead exemption does not of itself effect the title to property, but only gives the property certain characteristics regardless of the title to the property itself, erred in a matter of law.

7. The Court in affirming the order of the Referee in effect determining that the community property of the husband of the bankrupt should be applied to the payment of the debts of the wife contracted after marriage, erred in a matter of law.

WHEREFORE, petitioner prays that the said order of the said District Court be reviewed and revised in matters of law, and that said order be reversed, and for all proper [5] relief herein.

MORIN, NEWELL & BROWN,

By J. W. MORIN,

Attorneys for Elizabeth B. Russell, Bankrupt and
Petitioner.

United States of America,
 Southern District of California,
 Southern Division,
 County of Los Angeles,—ss.

Elizabeth B. Russell, being duly sworn, says: That she is the bankrupt in the foregoing proceedings, and is the petitioner in the within entitled matter. That she knows the contents of the foregoing Petition to Revise, and the same is true as she believes.

ELIZABETH B. RUSSELL.

Subscribed and sworn to before me this 26th day of February, 1927.

[Seal] JAMES WHEELER MORIN,
 Notary Public in and for the County of Los Angeles, State of California. [6]

EXHIBIT "A."

In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 8615-J.

In the Matter of ELIZABETH B. RUSSELL,
 Bankrupt.

TRUSTEE'S REPORT OF EXEMPT PROPERTY.

At Los Angeles, California, on the 10th day of September, 1926.

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property under the provisions of the Acts of Congress relating to Bankruptcy:

General Head.	Particular Description.	Value.
Military Uniforms, Arms and Equipment:		None
Property exempted under State Laws:		
	Wearing apparel	150.00
	Pictures	50.00
	2 Rings (pledged)	100.00
	1 Watch	25.00
	2 Pins	25.00
Claimed exempt under Section 690, C. C. P., State of California.		

The Trustee refuses to set aside as exempt the following described property, to wit:

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit:

That portion of Lot 2, in Block "Q" of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Records of said County, described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the Map of the Oakwood Tract, recorded in Book 9, page 33 of Maps, thence East parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel [7] with the East line of

Hudson Avenue, 60 feet thence West parallel with the South line of said California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of the beginning. Also known as No. 590 E. Hudson Avenue, in the City of Pasadena, California.

Said property has a value of approximately \$14,000.00 and is encumbered to the extent of approximately \$7,000.00. Encumbrance is in favor of the Hogan Finance Company. Declaration of homestead has been filed upon said property. The Trustee alleges that the bankrupt estate has an interest in said property and that the same should not be set aside as exempt to the bankrupt.

HERBERT F. LAUGHARN,
Trustee. [8]

EXHIBIT "B."

In the District Court of the United States, Southern District of California, Southern Division.

No. 8615-J.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

EXCEPTIONS AND OBJECTIONS TO TRUSTEE'S REPORT OF EXEMPT PROPERTY.

I.

Now comes Elizabeth B. Russell, of Pasadena, California, the above bankrupt, and excepts to the Trustee's report of exempt property filed herein

on or about the 10th day of September, 1926, in so far as in said report the Trustee refuses to set aside as exempt the following described property, to wit:

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit:

That portion of Lot 2, in Block "Q" of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Records of said County, described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the Map of the Oakwood Tract, recorded in Book 9, page 33 of Maps, thence East parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet thence West parallel with the South line of said California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of the beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California.

II.

The bankrupt respectfully represents that error has been committed by the said Trustee in refusing to set aside as exempt the above-described property in this, that the said above-described real property and all the right, title and interest of the bankrupt therein is a homestead and is exempt from execution

under the provisions of Chapters 1 and 2, Title 5, Part 4, Division 2 of the [9] Civil Code of the State of California.

III.

Bankrupt respectfully represents that on or about the 22d day of September, 1923, she entered into a contract in writing for the purchase of said described property from Hogan Company, the owner thereof, at the total agreed purchase price of \$14,500.00, payable in installments. \$2,000.00 was paid on said agreement on September 22, 1923, substantially all of which was the separate property of the bankrupt derived by her from distributive share in the estate of her mother who died some years before. Under the provisions of said agreement, the bankrupt was permitted to take possession of said property upon the execution of the agreement. The said property was at the time and still is improved with a single family dwelling-house and garage and the usual appurtenances of a dwelling-house and into said dwelling-house and to and upon said real property the said bankrupt, accompanied by her husband, Rufus W. Russell, and her daughter, Elizabeth Russell, moved on or about the 22d day of September, 1923.

IV.

At all times herein mentioned the bankrupt was a married woman, the wife of Rufus W. Russell. At all times herein mentioned and for many years prior thereto, and at all times since, the bankrupt was and still is living together with the said Rufus W. Russell as husband and wife and at all times herein

mentioned said Elizabeth Russell was the daughter of said bankrupt and Rufus W. Russell and living with her said parents and dependent upon them for support.

V.

That upon the 10th day of October, 1923, the bankrupt executed and acknowledged a declaration of homestead describing the property hereinabove described therein and claiming the same, together with the dwelling-house thereon and the appurtenances, as a [10] homestead. That said declaration showed that the declarant and claimant was a married woman; that the name of the husband was as hereinabove set forth; that the name of the daughter was as hereinabove set forth; that it contained a statement that at the time of the making of said declaration they all did actually reside on the premises hereinabove and therein described; that said declaration did further contain a statement that said husband had not made any declaration of homestead heretofore nor had the declarant, and that therefore this said declaration was made for the joint benefit of the said husband and the declarant. A statement of the actual cash value of said premises as estimated by declarant was also therein contained. The said declaration was thereafter and upon the 11th day of October, 1923, recorded in Book 2718, page 247, Official Records of Los Angeles County, California. A copy of said declaration is hereto annexed and designated Exhibit "A," and reference is hereby made to the same for further particulars, and it is hereby intended that said ex-

hibit shall be received with the same effect as if herein fully set out.

VI.

That all the matters and things contained in said declaration of homestead were true. That at the time the said bankrupt and her husband and daughter were all residing together upon said premises and intending to reside there permanently and the said bankrupt and her said husband have continued at all times since to reside and are still residing in and upon said premises as their permanent home.

VII.

That at the time of the recording of said declaration of homestead there were no judgments either rendered or entered against the claimant or her husband and no liens or other encumbrances against said property so far as any creditor or claimant is concerned. [11]

VIII.

That on or about the 24th day of September, 1923, the bankrupt borrowed, without security, the sum of \$1,000.00 from a friend, Mrs. Florence Hartman, and paid said sum upon said contract purchase for said above described real property, and that thereafter from time to time additional payments were made subsequent to the recording of said declaration of homestead upon said contract, but that all of said payments were made from community funds of Rufus W. Russell and said bankrupt. That said funds were appropriated by said bankrupt out of community funds which were subject to the actual

possession of bankrupt without specific authority of Rufus W. Russell and there was no intention expressed or assumed on the part of Rufus W. Russell either to make a gift of any of said sums of money to the bankrupt or to lend to her any such sums of money, but it was at all times referred to as the intention of bankrupt to credit the community with such proportionate interest in said property as the community funds therein invested bore to the separate funds of the bankrupt therein invested. That the total payments made upon said purchase price contract of said homestead property is \$7,500.00; that the total value of the interest in said property comprising both the separate interest of the bankrupt and the community interest therein is not in excess of the same amount and that there has at no time been any additional investment therein at the bankrupt out of her separate funds except the said initial payment of not exceeding \$2,000.00, and the bankrupt therefore respectfully represents and avers that the total value of the separate property interest of said bankrupt in said homestead property is not in excess of \$2,000.00.

WHEREFORE, bankrupt contends that all the right, title and interest of the said bankrupt, Elizabeth B. Russell, in or to said real property above described should be set aside as exempt property under the provisions of law in such cases made and provided [12] and that an order should be made to that effect herein.

ELIZABETH B. RUSSELL.

State of California,
County of Los Angeles,—ss.

I, Elizabeth B. Russell, the bankrupt debtor hereinabove mentioned, being duly sworn do depose and say: That I have read the foregoing Exceptions and Objections to Trustee's Report of Exempt Property and hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

ELIZABETH B. RUSSELL.

Subscribed and sworn to before me this — day of September, 1926.

[Seal] JAMES WHEELER MORIN,
Notary Public in and for the County of Los Angeles,
State of California. [13]

EXHIBIT "A."

DECLARATION OF HOMESTEAD.

KNOW ALL MEN BY THESE PRESENTS: That I, Elizabeth B. Russell, hereby declare that I am the wife of Rufus W. Russell; that said Rufus W. Russell is the head of the family consisting of himself, myself, the undersigned, and an adult daughter, Elizabeth Russell by name; that I do now at the time of making this declaration, actually reside, together with my said husband and daughter, on the premises hereinafter described; that my husband has not made any declaration of homestead heretofore, nor have I, and I therefore make

this declaration for the joint benefit of my said husband above named, and myself; that the premises on which I reside are described as follows:

Lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit:

That portion of Lot 2, in Block "Q" of the San Pasqual Tract, Book 3, Page 315, Miscellaneous records of said County, described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the map of the Oakwood Tract, recorded in Book 9, Page 33 of Maps, thence East parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet thence West parallel with the South line of said California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of the beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California.

That I do by these presents claim the premises above described, together with the dwelling-house thereon, and the appurtenances as a homestead; that the actual value of said premises I estimate to be \$14,000.00.

IN WITNESS WHEREOF, I the said Elizabeth B. Russell, have hereunto set my hand and seal this 10th day of October, 1923.

ELIZABETH B. RUSSELL. (Seal) [14]

State of California,
County of Los Angeles,—ss.

On this 10th day of October, 1923, before me, James Wheeler Morin, a notary public in and for said County and State, personally appeared Elizabeth B. Russell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

WITNESS my hand and official seal.

[Seal] JAMES WHEELER MORIN,
Notary Public in and for the County of Los Angeles,
State of California.

Recorded October 11, 1923, 33 min. past 1 P. M., in Book 2718, at page 247 of Official Records, Los Angeles County, Cal. C. L. Logan, County Recorder. I certify that I have correctly transcribed this document in above mentioned book. G. E. Fewel, Copyist, County Recorder's Office, L. A. Co., Cal. [15]

EXHIBIT "C."

In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 8615—J.

In the Matter of ELLSABETH B. RUSSELL,
Bankrupt.

NOTICE OF ENTRY OF JUDGMENT.

To Hubert F. Laugharn, Esq., Trustee Herein, Subway Terminal Bldg., Los Angeles, California, and to Elizabeth B. Russell, Bankrupt Herein, Care of Morin, Newell & Brown (J. W. Morin, of Counsel), Pacific-Southwest Bank Bldg., Pasadena, California, and to Morin, Newell & Brown, Attorneys for Said Bankrupt, Pacific-Southwest Bank Bldg., Pasadena, California.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 12th day of November, 1926, an order was made and entered herein, to which order you are referred for further particulars, reading in part as follows:

“ . . . NOW IT IS ORDERED that the said report of exemptions and the setting apart of the said property therein described to the bankrupt as exempt be and it hereby is approved so far as it relates to the following particular articles of property:

Wearing apparel	\$150.00
Pictures	50.00
2 Rings (pledged)	100.00
1 Watch	25.00
2 Pins	25.00

AND IT IS FURTHER ORDERED that the trustee's report refusing to set aside the following described property as exempt, to wit:

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit: That portion of Lot 2, in Block 'Q' of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Records of said County, described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the map of the Oakwood Tract, reported in Book 9, page 73 of Maps, thence [16] east parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet, thence West parallel with the South line of California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California.

is approved, and the Referee finds that the said property is worth approximately \$14,000.00, with an encumbrance of approximately \$7,000.00; that

the bankrupt is entitled to a claim of exemption by virtue of a declaration of homestead having been filed upon the said property to the extent of \$5,000.00; that the bankrupt estate is entitled to receive the difference between the total of the \$7,000.00 encumbrance plus interest and that the \$5,000.00 claim of homestead and the value of the property; and in accordance with the opinion of the Referee of October 1, 1926, the trustee is ordered to bring proceedings to sell the said property free and clear of liens and from the proceeds pay the said encumbrance plus interest and the claim of \$5,000.00 to the bankrupt, and account to the bankrupt estate for the surplus over and above the two said amounts.”

Under Rule 84 of the said District Court, any persons *interest* feeling aggrieved by said order may review the same by petition therefor filed within ten days.

Dated: November 17th, 1926.

EARLE E. MOSS,
Referee in Bankruptcy.
By LOUISE HUDSON,
Bankruptcy Clerk. [17]

EXHIBIT "D."

In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 8615-J.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

PETITION FOR REVIEW OF REFEREE'S
ORDER (BY U. S. DISTRICT COURT).

To the Hon. EARL E. MOSS, Referee in Bankruptcy for the Southern District of California, Southern Division:

Elizabeth B. Russell, of Pasadena, in the County of Los Angeles, in said Southern District of California, Southern Division, respectfully represents to the Referee that on the 12th day of November, 1926, an order was made and entered herein, to which order reference is hereby made for further particulars, reading in part as follows:

“. . . NOW IT IS ORDERED that the said report of exemptions and the setting apart of the said property therein described to the bankrupt as exempt be and it hereby is approved so far as it relates to the following particular articles of property:

Wearing apparel	\$150.00
Pictures	50.00
2 Rings (pledged)	100.00
1 Watch	25.00
2 Pins	25.00

AND IT IS FURTHER ORDERED that the trustee's report refusing to set aside the following described property as exempt, to wit:

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit: That portion of Lot 2, in Block 'Q' of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Records of said County, described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the map of the Oakwood Tract, recorded in Book 9, [18] Page 33 of Maps, thence East parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet thence West parallel with the South line of California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California.

is approved, and the Referee finds that the said property is worth approximately \$14,000.00 with

an encumbrance of approximately \$7,000.00; that the bankrupt is entitled to a claim of exemption by virtue of a declaration of homestead having been filed upon the said property to the extent of \$5,000.00; that the bankrupt estate is entitled to receive the difference between the total of the \$7,000.00 encumbrance plus interest and the \$5,000.00 claim of homestead and the value of the property; and in accordance with the opinion of the Referee of October 1, 1926, the trustee is ordered to bring proceedings to sell the said property free and clear of liens and from the proceeds pay the said encumbrance plus interest and the claim of homestead exemption of \$5,000.00 to the bankrupt, and account to the bankrupt estate for the surplus over and above the two said amounts.”

Attention is particularly directed to the fact that among other things said order approved the trustee's report refusing to set aside the real property above described as exempt although said property was the homestead of the bankrupt and her husband, Rufus W. Russell, by declaration of homestead duly claimed by the bankrupt, declared, recorded and filed long prior to the bankruptcy and exempt under the provisions of Section 1257 of the Civil Code of the State of California and Section 1240, Civil Code of the State of California.

The only right, title or interest of the bankrupt, Elizabeth B. Russell, in or to said real property which is the subject of the homestead, was the proceeds of the investment of \$2,000.00 therein by her, which investment was made on the [19] 22d day

of September, 1923. The bankrupt respectfully represents that no other sum of money and no other property of the bankrupt, Elizabeth B. Russell, was at any time thereafter invested in said property, but that such additional sums as were from time to time thereafter invested in said property were wholly community funds under the ownership and control of Rufus W. Russell, husband of the bankrupt, who is not in any manner whatsoever concerned in the bankruptcy or in the transactions out of which it arose. That all of the investment of community funds occurred long after the declaration of the homestead was recorded.

The bankrupt further respectfully represents that the total contributions of investment made in said homestead property from the funds of the community is \$5,000.00 and that the said homestead is subject to encumbrance, being the balance unpaid on contract of purchase due Hogan Company in the sum of \$7,000.00. That the said homestead property is not worth in excess of \$14,000.00. That the total value of the right, title and interest of the bankrupt in and to said homestead property is therefore less than \$5,000.00, to wit: is of the value of \$2,000.00 and no more, and the entire remaining interest therein is the community property of Rufus W. Russell.

Your petitioner respectfully urges that the Referee erred in so much of his order confirming the Trustee's report of exempt property as is embraced in the portion of said order confirming the refusal of the Trustee to set aside the above-de-

scribed real property as exempt property, and your petitioner cites this as an error and hereby asks for review of the Referee's order in reference to said refusal to set aside the said above-described real property as exempt property.

Your petitioner respectfully asks that the Referee forthwith certify to the Judges of the District Court of [20] United States, Southern District of California, the question presented by petitioner's petition in this respect, to wit: whether or not community funds procured by the bankrupt from the control of her husband and invested in property already exempt (which last-mentioned funds when added to the funds already invested therein by the bankrupt, exceed in amount the total homestead exemption of \$5,000.00) shall be deemed to create an excess interest in the bankrupt in the homestead property in excess of the interest permitted to be exempted under the law of the State of California and of the United States of America following thereon, regardless of the fact that the separate right, title and interest of the said bankrupt, Elizabeth B. Russell, was of a value of \$2,000.00 and less than the homestead exemption without said additions from the community source.

Notice of referee's order was received November 18, 1926.

Dated this 24th day of November, 1926.

ELIZABETH B. RUSSELL,

Petitioner.

MORIN, NEWELL & BROWN.

By J. W. MORIN,

Attorneys for Petitioner.

State of California,
County of Los Angeles,—ss.

Elizabeth B. Russell, being duly sworn, deposes and says: That I have read the foregoing petition and know the contents thereof and all the matters and things therein stated are true to my own knowledge.

ELIZABETH B. RUSSELL.

Subscribed and sworn to before me this 24th day of November, 1926.

[Seal] JAMES WHEELER MORIN,
Notary Public in and for the County of Los Angeles, State of California. [21]

EXHIBIT "E."

In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 8615—J.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

REFEREE'S CERTIFICATE ON PETITION
FOR REVIEW.

To the Honorable, The Judges of the United States District Court, in and for the Southern District of California, Southern Division:

I, Earl E. Moss, Referee in Bankruptcy, to whom

the above-entitled proceedings were referred, do hereby certify:

That in the course of the proceedings an order was made and entered on the 12th day of November, 1926, as follows:

“In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 8615—J.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

REFEREE'S ORDER APPROVING TRUSTEE'S REPORT OF EXEMPT PROPERTY.

Upon the 11th day of September, 1926, the trustee's report of property set apart to the bankrupt as exempt was filed and presented for approval, and exceptions thereto having been filed upon behalf of the bankrupt by her counsel, J. W. Morin, and the Referee having set for hearing the said trustee's report and the exemptions therein on the 27th day of September, 1926, at which time hearing was had and an opinion rendered by the Referee on October 1st, 1926, confirming and approving the said report as filed.

NOW IT IS ORDERED that the said report of [22] exemptions and the setting apart of the said property therein described to the bankrupt as exempt be and it hereby is approved so far as it re-

lates to the following particular articles of property:

Wearing apparel.....	\$150.00
Pictures	50.00
2 Rings (pledged).....	100.00
1 Watch	25.00
2 Pins.....	25.00

AND IT IS FURTHER ORDERED that the trustee's report refusing to set aside the following described property as exempt, to wit:

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit: That portion of Lot 2, in Block "Q" of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Records of said County, described as follows:

Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the map of the Oakwood Tract, recorded in Book 9, page 33 of Maps, thence East parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet thence West parallel with the South line of said California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California.

is approved, and the Referee finds that the said property is worth approximately \$14,000.00 with an encumbrance of approximately \$7,000.00; that the bankrupt is entitled to a claim of exemption by virtue of a declaration of homestead having been filed upon the said property to the extent of \$5,000.00; that the bankrupt estate is entitled to receive the difference between the total of the \$7,000.00 encumbrance plus interest and the \$5,000.00 claim of homestead and the value of the property; and in accordance with the opinion of the Referee of October 1, [23] 1926, the trustee is ordered to bring proceedings to sell the said property free and clear of liens and from the proceeds pay the said encumbrance plus interest and the claim of homestead exemption of \$5,000.00 to the bankrupt, and account to the bankrupt estate for the surplus over and above the two said amounts.

Dated this 12th day of November, 1926.

EARL E. MOSS,
Referee in Bankruptcy."

The question for determination is whether or not said order is a proper order. At the time the order was made I rendered an opinion, which is as follows:

“In the District Court of the United States, Southern District of California, Southern Division.

In the Matter of ELIZABETH R RUSSELL,
Bankrupt.

OPINION.

Appearances:

J. W. MORIN, representing the Bankrupt;

HUBERT F. LAUGHARN, representing himself
as Trustee.

The bankrupt has filed an exception to the return of the trustee refusing to set aside as exempt certain real property claimed as a homestead, such refusal being based upon the ground that the property is of the value of \$14,000.00, with a pre-homestead encumbrance of \$7,000.00, leaving a net value of \$7,000.00, being in excess of \$5,000.00, the maximum value of a homestead allowed the head of a family or his wife. [24]

On September 22, 1923, the bankrupt purchased upon contract certain real property for the purchase price of \$14,500.00, the contract for the purchase being in the usual form of conditional sale contract, upon which the bankrupt paid \$3,000.00 of her separate funds and \$4,500.00 of the funds of the community. No contention was expressed on the part of the husband or the bankrupt that the amount of the community funds, \$4,500.00, invested in this real property, was intended to be a gift to the bankrupt. In fact, these sums were applied by

her from earnings of a hotel being operated jointly by the bankrupt and her husband without any agreement as to the ownership in the property or effect upon the title. She contends now, however, that she is entitled to a homestead to the extent of her separate funds invested in the property, \$3,000.00, and the remainder of the homestead, or of the net value of the property, being community funds, is not liable for the debts incurred by the bankrupt (and sought to be discharged in this bankruptcy) which were the result of an enterprise in which she engaged alone, wherein the obligations were not contracted by the husband, and in which he was not engaged as a partner, associate or otherwise.

In *Swan vs. Walden*, 156 Cal. 195, the Court held that a wife might impress land held in joint tenancy by a husband and herself with a homestead, and said:

‘Here the wife seeks to impress the whole land with the homestead characteristic. This she may do as to her own interest, which is her separate property, and this she may do as to her husband’s interest, since she has the power to declare a homestead upon the husband’s separate property, though he has no such power over hers. The homestead thus attempted to be declared is upon land, all of which is susceptible at the instance of the wife of having the homestead characteristics impressed upon it.’

While the holding in this case is as tenants [25] in common rather than joint tenancy, the reasoning above set forth is such that it would seem to authorize the wife to impress with the homestead characteristic land owned by her as her separate property and by her husband and herself as community property.

Assuming, then, that such a homestead be valid as to the value allowed by law, can the wife, the bankrupt herein, elect to impress a homestead upon the land to the value of her separate estate, to wit, \$3,000.00 and \$2,000.00 of the community estate, leaving the \$2,000.00 excess in value over and above the maximum amount allowed by law, as the community property which cannot be applied to the satisfaction of the wife's debts? While I find no decisions exactly in point, that of the Supreme Court of California in Estate of Davidson, 159 Cal. 98, in theory supports my view. In that case the Court said:

“It will be observed that in this Swan case the court was dealing with a selected homestead, impressed by the wife upon land held in cotenancy solely by herself and husband, and her right to do so is sustained because, as she had a right to declare a homestead upon her separate property, and also upon the separate property of her husband, the effect of her declaration was to impress the entire land, and the *entire interests* therein held by them in joint tenancy, with the homestead characteristics; that within the spirit and intent of the

act of 1868 authorizing a homestead to be filed where a cotenant was in the exclusive occupation of the land of the cotenancy, Mrs. Walden has such exclusive possession for such purpose. It was her peculiar position under the homestead law which made it possible for her to impress the land in its entirety that took the homestead declared by her out of the general rule denying the right of a cotenant to create a valid homestead on cotenancy property. It is clearly pointed out in that opinion that, in the peculiar instance of the homestead there under consideration, as the entire interest in the tenancy was susceptible to the impress of homestead upon it by the wife, the reason supporting the general rule denying the right of the husband to declare a homestead upon land held in cotenancy by himself or wife or third parties did not apply.

Here, however, an entirely different question is presented. We are not dealing with a selected homestead which the Court is asked to set apart to the surviving wife. What was sought in the matter at bar in the Superior Court, was to have that court select, designate, and set apart as a probate homestead, not the land of [26] the cotenancy in its entirety, but the undivided interest of the deceased cotenant therein. If the Superior Court could do this, it could only do it because in the lifetime of the decedent either he or his wife could have impressed a homestead on this particular coten-

ancy interest alone. Neither of the spouses, however, could do this. The husband under no circumstances could declare a homestead which would embrace, with his own interest, that of his wife in the cotenancy property, because he is prohibited under the homestead law from declaring a homestead on the separate property of his wife unless with her consent manifested by making or joining in the making of the declaration. Such a general declaration, as it would embrace the whole of the land and the *entire interest* in the cotenancy, would not be affected by the general rule. But neither the husband nor the wife jointly or severally could in the lifetime of the husband have made a valid declaration of homestead upon his undivided interest in the cotenancy property, so as to affect that interest alone with the homestead characteristics, separate and distinct from the undivided interest of the wife therein.'

In the above quotation the Court was discussing the decision in *Swan vs. Walden*, 156 Cal. 195. The use of the words 'entire interests' will be observed. While it is the bankrupt's contention that the effect of her declaration of homestead was to impress a homestead upon the portion of the land belonging to her as her separate property and part of the land owned by the community with such characteristic, yet the declaration itself does not attempt to so divide the interests, for which reason I am of the opinion that the declaration of homestead is not void, but valid only in the amount allowed by law.

There is but one homestead allowed to husband or wife or both, and neither of the spouses can so divide the interests as to place beyond the reach of creditors, by claim of ownership in the other non-bankrupt spouse, the excess in value over the amount of a homestead allowed by law. For these reasons the bankrupt is not entitled to have the property set aside as exempt. Upon proceedings to sell free and clear of liens, the amount of the homestead [27] exemption, \$5,000.00, may be set aside, and ordered paid to the persons entitled thereto by law in proper proportions, and the sum remaining to the trustee for disbursement in the administration of this estate.

Dated October 1, 1926.

EARL E. MOSS,

Referee in Bankruptcy."

The turning point in this matter, it seems to me, is the fact that the bankrupt attempts to homestead a divided interest, and under the decision in *Estate of Davidson*, 159 Cal. 1908, such a declaration of homestead is not authorized by the laws of California.

That on the 26th day of November, 1926, Elizabeth B. Russell, by her attorneys, Messrs. Morin, Newell & Brown, filed a Petition for Review, which was granted and which Petition for Review is hereto attached.

The Referee is transmitting with this Certificate for Review transcripts of the testimony and proceedings had before him at the time of the hearing of said matter.

I hand up herewith for the information of the judges, the following papers:

1. Petition for Review of Referee's Order—dated November 24th, 1926.
2. Trustee's Report of Exempt Property—filed September 11th, 1926.
3. Stipulation—filed September 23d, 1926.
4. Affidavit of mailing of Exceptions and Objections to Trustee's Report of Exempt Property—filed September 27th, 1926.
5. Bankrupt's Exhibits Nos. "A," "B," "C," "D," "E," "F," and "G"; Trustee's Exhibits Nos. 1 and 2—filed September 27th, 1926.
6. Appointment, Oath and Report of Appraisers—filed December 7th, 1926. [28]
7. Reporter's transcript of testimony—filed December 7th, 1926.
8. Notice of Entry of Judgment—filed November 17th, 1926.

Dated: December 13th, 1926.

EARL E. MOSS,
Referee in Bankruptcy. [29]

EXHIBIT "F."

At a stated term, to wit: The January term, A. D. 1927, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Saturday, the 29th day of January, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable WM. P. JAMES, District Judge.

No. 8615-J.—BKCY.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

MINUTES OF COURT—JANUARY 29, 1927—
ORDER CONFIRMING ORDER OF REF-
EREE.

The order of the Referee of the 12th day of November, 1926, brought here for review by Elizabeth B. Russell, the bankrupt, having been examined and fully considered with the argument of counsel; said order is confirmed and approved. An exception is allowed the bankrupt to the making of this order. [30]

EXHIBIT "G."

222.

APPOINTMENT, OATH, AND REPORT OF
APPRAISERS.

(Form No. 13.)

In the District Court of the United States, South-
ern District of California.

IN BANKRUPTCY—No. 8615—J.

IN the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

IT IS ORDERED, that Thurmond Clarke, of
———, E. A. Lynch, of ——, and F. E. Fensch,
of ——, three disinterested persons, be, and they
are hereby, appointed appraisers to appraise the
real and personal property belonging to the estate
of the said bankrupt set out in the schedules now on
file in this court, at a compensation not exceeding
\$10 per day each, and report their appraisal to the
Court, said appraisal to be made as soon as may be,
and the appraisers to be duly sworn.

WITNESS my hand this 12th day of November,
A. D. 1926.

EARL E. MOSS,
Referee in Bankruptcy.

Southern District of California,—ss.

Personally appeared the within named _____

and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

E. A. LYNCH.

F. A. FENSCH.

THURMAN CLARKE. [31]

Subscribed and sworn to before me this 4 day of Dec. 1926.

[Seal]

LOUISE HUDSON,

Notary Public in and for the County of Los Angeles, State of California.

WE, THE UNDERSIGNED, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

Dollars Cents

Property lying and being in the County of Los Angeles, State of California, and bounded and particularly described as follows, to wit: That portion of Lot 2, in Block "Q" of the San Pasqual Tract, Book 3, Page 315, Miscellaneous Records of said County,

described as follows: Beginning at a point in the East line of Hudson Avenue, distant 70 feet South from the Southeast corner of California Street and Hudson Avenue, as said corner is shown on the map of the Oakwood Tract, recorded in Book 9, Page 33 of Maps, thence East parallel with the South line of said California Street, one hundred and twenty-five (125) feet, then South parallel with the East line of Hudson Avenue, 60 feet thence West parallel with the South line of said California Street, 125 feet to the East line of said Hudson Avenue, thence North along said East line 60 feet to the point of beginning. Also known as No. 590 S. Hudson Avenue, in the City of Pasadena, California. Said property is encumbered to the extent of approximately \$7,000.00 in favor of Hogan Finance Company and the bankrupt claims a \$5,000.00 exemption on the property.

Total Value 14,500.00

IN WITNESS WHEREOF, we hereunto set out hands, at Los Angeles, this 4th day of Dec., A. D. 1926.

E. A. LYNCH,
Appraiser.

F. E. FENSCH,
Appraiser.

THURMAN CLARKE,
Appraiser.

[Endorsed]: Filed Dec. 7, 1926, at — min. past 4 o'clock P. M. Earl E. Moss, Referee. Louise Hudson, Clerk. [33]

In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 8615-J.

In the Matter of ELIZABETH B. RUSSELL,
Bankrupt.

STIPULATION AS TO CERTAIN FACTS.

IT IS HEREBY STIPULATED by and between Herbert F. Laughran, Trustee, and Messrs. Morin, Newell & Brosn, attorneys for bankrupt, that the declaration of homestead filed by Elizabeth B. Russell and recorded October 11th, 1923, in Book 2718, at Page 247 of Official Records, Los Angeles County, California, was declared and recorded after Elizabeth B. Russell had invested in the property described therein the total amount of

Three Thousand Dollars (\$3,000.00), of which Two Thousand Dollars (\$2,000.00) were her separate funds and One Thousand Dollars (\$1,000.00) was money borrowed by her without security, and that no other sums were invested therein until a date long subsequent thereto and on or after February, 1924, when additional sums were invested from time to time thereafter totaling Forty-five Hundred Dollars (\$4500.00), all of which were community funds derived from the Crown Hotel, community property of the bankrupt and Rufus W. Russell, her husband.

Dated this 21 day of February, 1927.

HUBERT F. LAUGHARN,
Trustee.

MORIN, NEWELL & BROWN,
By J. W. MORIN,
Attorneys for Bankrupt. [34]

[Endorsed]: Filed Feb. 28, 1927, at — min.
past 2 o'clock P. M. [35]

[Title of Court and Cause.]

AFFIDAVIT OF SERVICE OF PETITION TO
REVISE.

State of California,
County of Los Angeles,—ss.

J. W. Morin, being first duly sworn, on oath deposes and says:

That on the 28th day of February, 1927, I did serve a true and correct copy of the Petition to Re-

wise filed herein on February 28th, 1927, upon Herbert F. Laugharn, Trustee of said Bankrupt, by leaving the same in his office, Room 615, Subway-Terminal Building, Los Angeles, California, in charge of his employee, to wit, his stenographer, he being at the time absent from said office.

Dated this 4th day of March, 1927.

J. W. MORIN.

Subscribed and sworn to before me this 4th day of March, 1927.

[Seal]

STANLEY K. BROWN,

Notary Public in and for the County of Los Angeles, State of California. [36]

Filed Mar. 7, 1927 at 15 min. past 2 o'clock P. M.

[Title of Court and Cause.]

STIPULATION AS TO RECORD AND FACTS.

It is hereby stipulated by and between Herbert F. Laugharn, Trustee of the Estate of Elizabeth B. Russell, a bankrupt, respondent herein, and Elizabeth B. Russell, claimant and petitioner herein, that the record of proceedings attached to the Petition for Revision in the above-entitled matter is a fully, true and correct copy of the proceedings in the District Court of the United States in and for the Southern District of California, Southern Division, concerning the Trustee's Report of Exempt Property, the Exceptions and Objections to Trustee's Report of Exempt Property filed herein by Elizabeth B. Russell, bankrupt, and the

proceedings thereunder had before the referee and before the United States District Court herein referred to; that the summary of the evidence contained in the Referee's Certificate on Petition for Review attached to the said Petition for Revision, and marked Exhibit "E," together with the stipulation as to Certain Facts dated the 21st day of February, 1927, between *Herbert F. Laugharn*, as Trustee, and *Morin, Newell & Brown*, as counsel for the Bankrupt, constitute a full, true and correct statement of the facts relating to said claim as the same were presented before the said Referee and before the said United States District Court above mentioned; that the said matter may be heard, considered and determined by the United States Circuit Court of Appeals on said record. [37]

Dated this 28 day of February, 1927.

HUBERT F. LAUGHARN,

Trustee.

MORIN, NEWELL & BROWN.

By J. W. MORIN. [38]

[Endorsed]: Filed Mar. 7, 1927, at 15 min. past 2 o'clock P. M. [39]

[Title of Court and Cause.]

ORDER (OF UNITED STATES DISTRICT COURT) ALLOWING PETITION FOR REVISION AND THAT CLERK PREPARE RECORD.

WHEREAS, Elizabeth B. Russell, Bankrupt, feels aggrieved by order entered herein on the 29th day of January, 1927, and the Court being satisfied that the questions therein determined are questions of which revision may be asked, as provided in Sections 24 & 25 of the Bankrupt Act of 1898, and that the application should be granted, on motion of Messrs. Morin, Newell & Brown, attorneys for said Bankrupt,—

IT IS ORDERED that the order of this Court made and entered herein on the 29th day of January, 1927, confirming the order of Earl E. Moss, Referee in Bankruptcy, which approves the Report of the Referee in so far as it refuses to set aside certain therein described property as exempt property, be revised in matters of law by the United States Circuit Court of Appeals in and for the Ninth District, as provided by Section 24-B of the Bankrupt Act of 1898, and the rules and practice of that Court; and that the Clerk of this court prepare at the expense of Petitioner a certified copy of such order and a record of this case as provided in said Petition, and in conformity with the Stipulations of the Trustee and counsel for the Bankrupt.

Dated this 28th day of February, 1927.

WM. P. JAMES,

United States District Judge. [40]

[Endorsed]: Filed Feb. 28, 1927, at 45 min. past
2 o'clock P. M. [41]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT ON PETI-
TION FOR REVISION.

To the Clerk of Said Court:

Sir: Please issue certified copy of the following portions of the record in the above matter for use in the support of the Petition to Revise, filed February 28, 1927, to wit:

1. Trustee's Report of Exempt Property.
2. Exceptions and Objections to Trustee's Report of Exempt Property.
3. Notice of Entry of Judgment (By Referee).
4. Petition for Review of Referee's Order (By United States District Court).
5. Referee's Certificate on Petition for Review.
6. Order of the United States District Court Confirming Order Approving Referee's Order.
7. Appraisement.
8. Affidavit of Service of Petition to Revise.
9. Stipulation as to Record and Facts.

10. Order (of United States District Court) Allowing Petition for Revision and that Clerk Prepare Record.

MORIN, NEWELL & BROWN.

By J. W. MORIN,

Attorneys for Bankrupt.

[Endorsed]: Filed Mar. 4, 1927, at 40 min. past 4 o'clock P. M. [42]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON PETITION FOR REVISION.

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 42 pages, numbered from 1 to 42 inclusive, to be the transcript on Petition for Revision in the above-entitled cause, and contains a full, true and correct copy of the following:

Petition for Revision,—which contains exhibits lettered from “A” to “G,” inclusive, being copies of the following:

Trustee's Report of Exempt Property,
 Exceptions and Objections to Trustee's Report of Exempt Property,
 Notice of Entry of Judgment (By Referee),
 Petition for Review of Referee's Order (By United States District Court),
 Referee's Certificate on Petition for Review,

Order of the United States District Court Confirming Order Approving Referee's Order, and

Appraisement,

and Affidavit of Service of Petition to Revise,

Stipulation as to Record and Facts,

Order (of United States District Court) Allowing

Petition for Revision and That Clerk Prepare

Record, and

Praecipe

I DO FURTHER CERTIFY that the fees of the Clerk for preparing and certifying the foregoing Record on Petition for Revision amount to \$7.00, and that said amount has been paid me by the petitioner herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 10th day of March, in the year of our Lord one thousand nine hundred and twenty-seven, and of our Independence the one hundred and fifty-first.

[Seal]

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

[Endorsed]: No. 5097. United States Circuit Court of Appeals for the Ninth Circuit. Elizabeth B. Russell, Bankrupt, Petitioner, vs. Hubert F.

Laugharn, as Trustee in Bankruptcy of the Estate of Elizabeth B. Russell, Bankrupt, Respondent. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the Southern Division of the United States District Court for the Southern District of California, Southern Division.

Filed March 14, 1927.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.